## SALHA v. REG.

[C.C.A. (Tan Ah Tah Ag. C.J., Chua and Wee Chong Jin JJ.) December 5, 1958]

[Singapore — Criminal Appeal No. 20 of 1958]

*Criminal Law and Procedure — Murder trial — Summing-up — Misdirection.*

*Evidence — Inadmissible evidence — Admission of — Effect of.*

In this case the appellant was convicted of murder and was sentenced to death. The conviction was attacked principally on the ground that the trial Judge had asked certain questions of a witness and elicited answers thereto and such answers were inadmissible as they were hearsay, and furthermore that the trial Judge referred to such evidence in his summing-up and this had enhanced the damaging effect of such inadmissible evidence and had gravely prejudiced the fair trial of the appellant.

**Held:** in the special circumstances of this case the inadmissible evidence and the misdirection had gravely prejudiced the fair trial of the appellant and the conviction cannot be allowed to stand.

COURT OF CRIMINAL APPEAL.

*A. E. Fox (Mrs.)* for the appellant.

*J. B. Jeyaretnam* (Crown Counsel) for the respondent.

**Tan Ah Tah Ag. C.J.:** At the conclusion of the hearing we allowed the appeal and quashed the conviction and intimated that we would give reasons later. We now proceed to give our reasons.

The appellant was convicted of the murder of Nia binte Yusoff and was sentenced to death.

The conviction was attacked principally on the ground that the trial Judge had asked certain questions of a witness and elicited answers thereto and such answers were inadmissible as they were hearsay, and furthermore that the trial Judge referred to such evidence in his summing-up and this had enhanced the damaging effect of such inadmissible evidence and had gravely prejudiced the fair trial of the appellant.

One of the defences was that the murder could have been committed by one Suhaime bin Haji Serat. The following facts were brought out by the defence in the course of the cross-examination of Insp. Lim Chye Heng who was the investigating officer. In 1956 a young girl of 12 years of age living at No. 12 Perak Road, where the appellant and the deceased Nia binte Yusoff were living, was murdered in the vicinity of her house and Suhaime bin Haji Serat was charged with her murder. Nia binte Yusoff gave evidence for the prosecution and she identified Suhaime as being present about the time the child was killed. Suhaime made a confession before a Magistrate and admitted killing the child on a sudden impulse. Suhaime subsequently retracted his confession. Suhaime was found guilty of murder. On appeal a retrial was ordered and Suhaime was eventually found not guilty. The child sustained 23 wounds and a strange feature of this present case was that the same number of wounds was inflicted on Nia binte Yusoff.

The prosecution in this case, as Suhaime's name was mentioned by the defence, called Suhaime as a witness and tendered him for cross-examination. The effect of Suhaime's evidence was that at 9 a.m. on the 16th April, 1958, the day Nia binte Yusoff was murdered, he was at Changi with an elderly person in the house of his adopted brother.

Insp. Lim Chye Heng was then recalled and further examined by the prosecution and his evidence was that he took Suhaime to Changi and as a result of his investigation he released Suhaime. The Inspector was then cross-examined by the defence and then the trial Judge asked the questions and elicited the answers which the appellant complained of. The questions of the trial Judge and the answers of Insp. Lim Chye Heng were as follows:—

"His Lordship: *Q.* You went down to Changi with the last witness? (Suhaime).

*A.* Yes.

*Q.* Did you interrogate this elderly person and also a person who is the adopted brother-in-law of the last witness?

*A.* Yes.

*Q.* Were you satisfied yourself as a result of that interrogation?

"His Lordship: *Q.* (cont.) that the last witness was at Changi at 9 o'clock on the morning of the 16th April?

*A.* Yes, my Lord.

Neither the elderly person nor Suhaime's adopted brother was called as a witness by the prosecution.

It is clear that Insp. Lim Chye Heng did not himself see Suhaime at Changi at 9 a.m. on the 16th April, 1958, and when he said he was satisfied that Suhaime was in Changi at that time he merely relied on what he was told. In our opinion this answer given by Insp. Lim Chye Heng was inadmissible in that it purported to prove a fact based on information supplied to him by the elderly person and the adopted brother of Suhaime and was clearly hearsay.

Unfortunately the trial Judge in the course of his summing-up directed the Jury on this inadmissible evidence. The Judge said:—

" His (Suhaime's) movements were checked by Insp. Lim Chye Heng who said he was perfectly satisfied as a result of his investigations which took him to Changi that the accused ...

(there is no doubt a mistake here, the Judge meant to say 'Suhaime')

" was at Changi at the time this murder was committed and had nothing whatever to do with the present case. If you accept that evidence, members of the Jury, that disposes of the question once and for all as to whether Suhaime bin Haji Serat committed this murder."

The effect of the summing-up was that the Jury was directed that if they accepted this inadmissible evidence of Insp. Lim Chye Heng, then the suggestion of the defence that Suhaime was the murderer had been disproved. In our view this was clearly a misdirection.

We cannot say that the Jury was not influenced by this inadmissible evidence and by this misdirection when they considered the other evidence against the appellant. We are of the opinion that in the special circumstances of this case the inadmissible evidence and the misdirection had gravely prejudiced the fair trial of the appellant.

The case against the appellant was based on circumstantial evidence and there were many unsatisfactory features in this case. To mention a few, first there was uncertainty in the medical evidence as to when the deceased died. It was possible on the medical evidence for the Jury to find that the deceased died after 9.30 a.m. and if that was so, on the evidence of the prosecution that the appellant was from 9.30 a.m. until 11 a.m. on the 16th April, 1958 in the company of one of the prosecution witnesses Rudahair binte Sanivan, the appellant could not have committed this crime. Secondly, the trial Judge failed to refer to the defence put forward at the trial that in view of the number of injuries inflicted on the deceased, the position of such injuries, the height of the appellant in relation to the height of the bed in which the deceased was found, and the medical evidence called by the defence, the appellant could not have committed the murder. Thirdly, the trial Judge failed to direct the Jury correctly regarding the cuts on the appellant's finger. The appellant maintained that the cuts were caused when she was opening a tin and her evidence was corroborated by a medical witness who said that the cuts could have been caused by the edge of a tin. The trial Judge in his summing-up however incorrectly stated "there is no evidence as to how she came by them (the cuts)" and continued "or whether they were caused during the stabbing."

In view of the inadmissible evidence and the misdirection and the many other unsatisfactory features of this case we were of the opinion that it would be unsafe to allow the conviction to stand and we allowed the appeal and quashed the conviction.

*Appeal allowed, conviction quashed.*

Solicitors: *Donaldson & Burkinshaw.*

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## SERVICES LTD. v. WONG LIANG TOON & ORS.

[O.C.J. (Chua J.) November 4, 1958]

[Singapore — Suit No. 1482 of 1956]

*Landlord and Tenant — Control of Rent Ordinance (Cap. 242), s. 15(1)(k) — Demolishing premises for the purpose of rebuilding in the interest of public health — General Improvement Plan and Master Plan — Words "necessary" and "essential" — Meaning of*

This was an action for the possession of premises Nos. 221 and 223 Victoria Street. The plaintiffs were the owners, the first defendant was the tenant and the 2nd defendants were the sub-tenants.

The plaintiffs' case was that the demolition was necessary in the interest of town improvement and that Victoria Street was accepted to be a major traffic route and the site of these premises was in a local shopping area. It was emphasised that if this development takes place a 24 ft. service road would be provided at the rear which would enable goods to be loaded and unloaded at the back of the premises and this would in some measure relieve the traffic congestion in Victoria Street. Mr. Meyer, the Planner of the Singapore Improvement Trust said in his evidence that there has long been a scheme to widen Victoria Street and the new buildings erected in Victoria Street have already been set back for this purpose. The plaintiffs in this case would have to give up part of the land in front for the widening of Victoria Street. The Planner informed the Court that the proposed development of the plaintiffs complies with the General Improvement Plan and the Master Plan.

The case for the defendant was firstly that there was no intention on the part of the plaintiff to rebuild the house and secondly that section 15(1)(k) was concerned not with rebuilding but whether demolition was necessary for the town improvement and that the word "necessary" means "essential." It was contended that the demolition was not essential in this case.

**Held:** (1) the General Improvement Plan is the existing statutory town planning in Singapore while the Master Plan had not at the date of the hearing become part of Singapore town planning. This proposed development will clearly be town improvement within the meaning of paragraph (k) of sub-section (1) of section 15;

(2) the plaintiffs have established both as to the facts and as to the law that these premises should be demolished in the interest of the town improvement.